

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

AUSTIN LEE CHIPPS, SR., Movant, vs. UNITED STATES OF AMERICA, Respondent.	5:22-CV-05077-RAL ORDER DIRECTING SERVICE AND REQUIRING RESPONSE
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Movant Austin Lee Chipps, Sr., filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. Doc. 1. Chipps argues that his conviction should be overturned under United States v. Davis, 139 S. Ct. 2319 (2019) and Borden v. United States, 141 S. Ct. 1817 (2021). Id. at 1-3. Under Rule 2(c) of the Rules Governing Section 2255 Proceedings, a motion “must substantially follow either the form appended to [the Rules Governing Section 2255 Proceedings] or a form prescribed by a local district-court rule.” Similarly, Local Rule 83.8(A) allows for a motion not in accordance with the instructions provided on a § 2255 form if the motion “is understandable” and “substantially conforms with federal and local requirements[.]” D.S.D. Civ. LR 83.8(A). Although Chipps did not file his motion on the proper § 2255 form, the Court finds that Chipps’ motion substantially conforms with the requirements.

This Court is to dismiss a motion under § 2255 if it “plainly appears . . . that the moving party is not entitled to relief[.]” Rule 4(b), Rules Governing § 2255 Proceedings. This Court cannot determine with confidence that it “plainly appears” that Chipps is not entitled to any relief, although ultimately that may be the case.

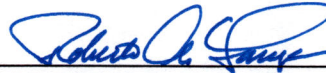
Therefore, it is hereby

ORDERED that the Clerk of Court serve a copy of all pleadings of record and this Order on Respondent. It is further

ORDERED that Respondent file an answer, and if it so chooses, a motion to dismiss and memorandum, within thirty days of service of the pleadings. It is finally

DATED September 30th, 2022.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE